

Appl. No. 10/729,273
Amdt. Dated January 27, 2006
Reply to Office Action of November 3, 2005

REMARKS

Claims 1-20 are pending in the application. Claims 10-17 were withdrawn from further consideration as being directed toward a non-elected species. In the Office Action, claims 1-8 are noted as allowable and claims 9 and 18-20 stand rejected. Claim 9 has been amended and claims 19 and 20 have been cancelled.

Claim Objections

The spelling error ("tracks") in claim 9 at line 6 has been corrected via amendment to claim 9.

Claim Rejections Under 35 U.S.C. §112

Claims 9 and 18 stand rejected under 35 U.S.C. §112, first paragraph, because claim 9, lines 19 and 20 do not have adequate written description support in the specification. Applicants traverse, and submit that the term "deformable" in the limitation "the deformable energy absorption surface interferes with said ball cage" has adequate written description support in the specification as originally filed.

Compliance with §112, first paragraph, requires sufficient information in the specification to show that the inventor possessed the invention at the time of the original disclosure. The drawings alone may be sufficient to provide the written description of the invention as required by §112, first paragraph. *Vas-Cath, Inc. v. Mahukar*, 935 F.2d 1555, 1564 (Fed. Cir. 1991). Further the written description requirement does not require that the Applicants describe exactly the subject matter claimed, rather the description must only allow persons of ordinary skill in the art to recognize that the Applicants invented what is claimed. *Union Oil Co. of California v. Atlantic Richfield Company*, 208 F.3d 989, 997 (Fed. Cir. 2000).

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In this case, support for the claim language "wherein the deformable energy absorption surface interferes with said ball cage" can be found at paragraph [0032], [0033], [0034] and [0035] of the specification as originally filed. Paragraphs [0030] and [0040] also support Applicants' position that §112, first paragraph, has been satisfied. In the specification, language commensurate in scope with the language of the claims, although not identical, supports this claimed feature. The specification discusses in detail the ability of the energy absorption feature to dissipate crash energy. This clearly implies deformation of the energy absorption surface through interference between the surface and the relevant joint part which, in this case, is the ball cage.

In all instances where the energy absorption surfaces 80, 81, 82 are described, it is made clear that energy is absorbed during interference between the cage and the surface 80, 81, 82 in a controlled manner. That is, the surfaces 80, 81, 82 are engineered to deform and absorb crash energy such that the behavior of the CVJ during a crash event can be regulated. In the words of the specification, "the bore surfaces 82 can be tuned to achieve different force levels, allowing for design of a controlled energy absorption profile within the constant velocity joint 11." (paragraph [0032] at lines 26-28).

It does not matter that the word "deformable" is not expressly used. The specification does not have to provide *in haec verba* support for the claimed subject matter at issue. *Cordis Corp. v. Medtronic AVE, Inc.* 339 F.3d 1352, 1364 (Fed. Cir. 2003).

Persons of skill in the art would also recognize that Applicants intended the surfaces 80, 81, 82 to be deformable by the parallel descriptions of the energy absorption surface 74 and the surfaces 80, 81, 82. All are described as having the exact same characteristics such that the joint behavior during a crash event can be engineered to have a controlled response.

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Applicants further traverse the argument that the surfaces 80, 81, 82 cannot be deformable because they are made from the same rigid material as the outer joint part 50 and, thus, are only equally "destructible." Only "one embodiment contemplates the bore surface 82 to be manufactured from the same material as the outer joint part 50." ([0032] at lines 13-14). This does not imply that the surface 82 has the same deformation properties as the outer joint part 50. Rather, the surface 82 is described as being formed by "tacking, staking, or riveting" or welding or layering a material on the inner bore 64, and the Figures clearly show that the amount of material used would clearly deform long before the outer joint part destructs.

Further, the energy absorption surfaces do not have to be the same material as the outer joint part 50. "The tuning may be accomplished by changing the size, the shape, the material, or the location of the bore surfaces 82." ([0032] at lines 28-30). Thus, it cannot be concluded that the surfaces 80, 81, 82 must destruct in the same manner as the outer joint part 52.

In sum, Applicants submit that the written description requirement is satisfied because the specification and drawings describe the invention in sufficient detail such that one of ordinary skill in the art can conclude that the Applicants invented the claimed subject matter.

For all of the foregoing reasons, the rejection set forth at paragraph 5 of the Office Action should be withdrawn.

Claim Rejections Under 35 U.S.C. §103

Claims 19 & 20 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Booker et al. (U.S. Patent No. 6,585,601. In the present Amendment, claims 19 and 20 have been cancelled. Therefore the present rejection is now moot.

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Rejoinder Of The Non-Elected Claims

Applicants request that claims 10-17 be rejoined and allowed because claim 9 is a generic claim from which these claims depend. As claim 9 is allowable, claims 10-17 should also be allowed.

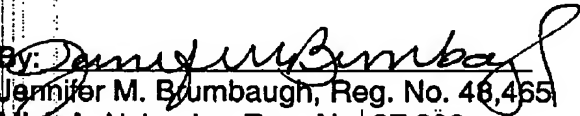
Conclusion

Having overcome all of the objections and rejections set forth in the Office Action, Applicants submit that the application and claims are in a condition for allowance. A Notice of Allowance indicating the allowability of claims 1-17 should be issued. The Examiner is invited to telephone the Applicants' undersigned attorney at (248) 377-1200 if any unresolved matters remain.

Respectfully Submitted,

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